

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,
Plaintiff,

v.

[7] ANTONIO DE JESUS VELAZQUEZ,
Defendant.

CRIMINAL NO. 08-163 (ADC)

REPORT & RECOMMENDATION

On August 14, 2008, co-defendant [7] Antonio De Jesús-Velázquez (“De Jesús-Velázquez”) filed a motion to suppress recording N-26 because “background noise and multiple participants in the conversation make important parts of the audio recording inaudible or incomprehensible.” (Docket 181). The United States filed its opposition to this motion to suppress on August 22, 2008. (Docket 183).

The court has listened *in camera* to recording N-26 and compared it with the transcript that has been furnished by the government.¹ After listening to recording N-26, the undersigned finds that despite of the fact that some of its portions contain loud background noise, the recording overall does not reach the point where “the inaudible parts are so substantial as to make the rest more misleading than helpful.” U.S. v. Carbone, 798 F.2d 21, 23 (1st Cir. 1986) (citations omitted). In that respect, it is respectfully recommended that the motion to suppress recording N-26 on inaudibility grounds be denied.

The transcript prepared by the government, however, should be amended as follows:

- Page 5, Cheo’s entry, second sentence (“Go over there, go by, over there”) is inaudible or unintelligible.
- Page 14, Antonio’s entry (“I will check”) is inaudible or unintelligible.

¹The government had previously provided the court with CDs/DVDs containing various audio/video recordings and transcripts because of other motions to suppress filed by other co-defendants raising similar issues. (E.g., Docket 115, 117, 140, 143, 148, and 154).

- Page 14, Cheo's second entry, the only audible portion is the sentence that reads: "Open the car, get the thing from the car." Everything else in that entry is inaudible or unintelligible.

Aside from the suggestions mentioned above, all the remaining portions of the transcript submitted by the government seem to accurately indicate the contents of the audio/video recording at issue.

WHEREFORE, it is recommended that defendant [7] Antonio De Jesús-Velázquez's motion to suppress (Docket 181) be DENIED, but that the transcript of recording N-26 be amended as suggested above.

This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(d) of the Local Rules of Court. Any objections to the same must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. Rule 72(d), Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and recommendation is a waiver of the right to review by the district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

SO RECOMMENDED.

In San Juan, Puerto Rico, this 25th day of August, 2008.

s/Marcos E. López
U.S. MAGISTRATE JUDGE